IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 21 .09.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice R.REGUPATHI

Habeas Corpus Petition No.1306 of 2007

P.Navaneetha Krishnan ... Petitioner

vs.

1. The Commissioner of Police,
Greater Chennai, Egmore,
Chennai.

2. The Superintendent of
Prison, Central Prison, Coimbatore,
Coimbatore.

3. The Inspector of Police,
Tambaram P.S.,
Kancheepuram District. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus as stated therein.

For Petitioner : Mr.A.E.Lakshmi Narayanan
For Respondents : Mr.N.R.Elango, Additional Public Prosecutor.

O R D E R

(Delivered by R.Regupathi, J.)

The petitioner herein is the brother of the detenu by name P.Kanagaraj, who is confined in Central Prison, Coimbatore. He has preferred this Habeas Corpus Petition to call for the records relating to the remand of detenu Kanagaraj in PRC No.49 of 2003 on the file of the Judicial Magistrate, Tambaram, quash the same and consequently direct the respondents to set him at liberty.

2. It is stated that the detenu surrendered before Judicial Magistrate No.1, Vellore, on 23.07.2004 and he was remanded to judicial custody for

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15 days in respect of a case registered in Crime No.378 of 2003 for offences punishable under Sections 147, 148, 341, 302 IPC. read with Section 120B IPC. The investigation of the said case was over, final report was filed and the learned Magistrate had also taken cognizance of the offence alleged against the accused in PRC No.49 of 2003. The detenu has been arrayed as A-19 in the said case amongst 21 accused. The case has not been committed to the Court of sessions and still, it is pending at PRC stage. The detenu was being produced before court and periodically, the remand was extended till 04.08.2006. Thereafter, the detenu was not produced before court for further extension and mechanically, without application of mind, the learned Judicial Magistrate adjourned the hearings without insisting for production of the detenu. It is alleged that the Investigating Officer/Respondent No.3 never filed any requisition for extension of remand and the detenu is kept in illegal confinement without any valid order of remand. Since the detenu has been deprived of his personal liberty as a result of violation of the procedure established by law, the petitioner seeks in this Habeas Corpus Petition, dated 31.08.2007, for setting the detenu at liberty.

3. Per contra, learned Additional Public Prosecutor, while admitting that the detenu was not produced before the learned Magistrate between 04.08.2006 and 30.08.2007, would however submit that, on 12.09.2007, he was produced before the Judicial Magistrate, Tambaram, and his remand has been extended till 21.09.2007, thus, as on date, a valid remand order is in force as against the detenu. He pointed out that the detenu was remanded initially as per the orders passed by the learned Magistrate and from time to time, his remand was being extended, but, due to non-availability of transport/police escort and other exigencies, the detenu could not be produced before court during the said period. It is submitted that, apart from the present case, the petitioner is involved in two other cases, of which, one ended in conviction on 29.08.2005 for offences punishable under Sections 148, 449, 341 and 302 IPC., whereby, he was sentenced to undergo life imprisonment. Though he was granted bail and sentence was suspended by this Court, sureties were not executed as on date and therefore, he is a convict prisoner. In the second case against the detenu, ie., Crime 320 of 2002, for offences punishable under Sections 392 and 397 IPC read with Section 120B IPC., on the file of the Inspector of Police, Trichengode Police Station, trial of the case is pending on the file of the Presiding Officer, Fast Track Court, Namakkal. In this case, though the detenu was earlier enlarged on bail, on his surrender for some other case, he has been produced through P.T. warrant and remanded to judicial custody. By adverting to the above aspects, it is highlighted that the detenu is not only concerned with the case in PRC No.49 of 2003 but also two other cases as stated above i.e., in one case, he is a life convict and in the other case, under-trial prisoner. The detenu was initially kept in Central Prison, Madurai, and thereafter he has been shifted to Coimbatore. Further, the detenu is in judicial custody simultaneously for the aforesaid three cases. Only under such circumstances, he was not produced before the learned Judicial Magistrate,

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Tambaram, and, in view of his production on 12.09.2007, the irregularity committed in the instant case has been cured and, as on date, the detenu is in remand in pursuance of a valid order by the Magistrate not only in respect of the case in PRC No.49 of 2003 but also the other two cases. In such circumstances, learned Additional Public Prosecutor submitted that the detenu is in lawful confinement and prayed to reject the claim of the petitioner.

4. We have carefully perused the materials available on record particularly the extract of the docket proceedings in PRC No.49 of 2003 on the file of the Judicial Magistrate, Tambaram. The endorsement made on 04.08.2006 is, " ... A19 (the detenu) Produced ....". When the matter came up for hearing between 18.08.2006 and 12.04.2007, it has been simply endorsed, ".... A19 not produced .....". Strangely, on the dates of hearing from 26.04.2007 to 05.07.2001, not even such noting has been made and, by simply endorsing the petitions filed by the other accused, the case was adjourned. The endorsements made on 19.06.2007, 02.08.2007 and 16.08.2007 again is to the effect 'A19 not produced'. Thus, it is ex facie apparent that no valid extension of remand has been ordered and the endorsements speak to the non-application of mind on the part of the Magistrate concerned inasmuch the vital aspects as to whether the detenu is in judicial custody or not and whether further extension must be granted or not escaped his consideration.

5. Though it has been submitted on behalf of the State that the detenu is in valid remand for two other cases, we deem it worthwhile to emphasise here that it is the bounden duty of the Magistrate to be watchful to see that the liberty of an individual is not violated by the police unreasonably while remanding or passing extension of remand. In other words, only on production of the individual for the particular case in respect of which remand/extension of remand is sought for, the Magistrate would be in a position to satisfy himself with regard to the above aspect. Further, remand orders are not to be passed by courts mechanically without verifying diaries and without personally satisfying about the real necessity for remand or its extension. Non-production of the accused will amount to violation of the provisions of the Criminal Procedure Code and the Constitution of India. The Jail Authorities also do not have any right to keep any person without a valid order of remand or extension of remand from the judicial Magistrate concerned beyond the period of remand. Once final report/charge sheet is filed before the Magistrate concerned and cognizance is taken by him, remand order will be passed under Section 309 IPC. During the course of investigation, as per the requisition made by the Investigating Officer, remand will be made under Section 167 Cr.P.C. After the Magistrate having taken cognizance, requisition from the Investigating Officer is not necessary and it is the Magistrate who, under Section 309 Cr.P.C., on production of the person accused on the date of expiry of remand and on application of mind, can extend the remand or release the person accused of the offence on bail. In this regard, it is pertinent to extract Section 309(2) IPC.,

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" 309. Power to postpone or adjourn proceedings.--
(1) .....
(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:
Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:
..... "

6. In the case on hand, though the learned Magistrate has mechanically made endorsements in the court diary, he never insisted upon production of the detenu before court but simply adjourned the hearing from time to time. Thought the accused person is in custody for other cases, since remand has been ordered for the case on hand also, periodical production of the accused in respect of the present case is necessary before the Magistrate for extension of remand. Such a mandatory provision of law has not been followed during the course of proceedings from 04.08.2006 to 12.09.2007. The present Habeas Corpus Petition has been filed on 31.08.2007 and on coming to now of the same, it appears that the detenu has been diligently produced on 12.09.2007 and an order of remand has been passed by the learned Magistrate. While holding that non-production of the detenu during this period is violative of the procedure established by law and the provisions of the Constitution, we may have to enquire into the validity of the detention as on today.

7. While disapproving the conduct of the learned Magistrate as well as the Jail authorities with reference to the proceedings between 04.08.2006 and 12.09.2007, by taking note of the fact that a remand order is in force as on to-day and in the light of the other surrounding circumstances as pointed out earlier, we may hasten to hold that the detenu is in valid remand. Further, the submission made by the State cannot be so easily brushed aside. In view of the reason that the petitioner is in judicial custody as a life convict in one of the cases and under-trial prisoner in remand in another case, all put together, we are of the considered view that the petitioner is not in illegal detention as alleged.

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8. The question as to whether the valid order of remand passed subsequently will cure the earlier defect is vividly answered in a Division Bench decision of this Court reported in 1993 Law Weekly Criminal 392 (T.Mohan, etc. v. State by Inspector of Police, CBCID, Madras). and the relevant portion is extracted below:-

" 7. On facts, there is no doubt that the order extending the remand by the Judicial Magistrate, Chengalpattu, from 25.1.1993 to 25.2.1993 is totally illegal and unsustainable. But that does not automatically enable or help the petitioner to get the relief as

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prayed for in this petition, notwithstanding the valid and legal remand order passed by the learned District and Sessions Judge, Chengalpattu, on 14.2.1993. The contention of the learned Counsel for the petitioner that on the date when the petitioner filed this H.C.P., there was no valid order of remand and, therefore, the subsequent order, even if valid, will not cure the earlier defect, cannot be accepted, as the relevant date for the purpose of considering whether the custody is legal or illegal is the date of hearing of the habeas corpus petition, and not the date of filing of the said petition, nor any earlier date. No doubt, previously,.. there was some doubt whether an illegal custody, for any reason whatsoever, can be cured by a subsequent valid order or remand, and whether the date of hearing of the Habeas Corpus petition is the relevant date for considering the legality of the custody. That doubt has subsequently been put at rest by the Judgment of the Supreme Court in AIR 1974 SC 510 (supra). The Supreme Court, in the said Judgment, after noticing the earlier three types of view, observed thus: "....."

It is now well settled that the earliest date with reference to which the legality of detention challenged in a Habeas Corpus proceeding may be examined is the date on which the application for Habeas Corpus is made to the Court. This Court speaking through Wanchoo, J. (as He then was) said in A.K. Gopalan v. Government of India, (1966) 2 SCR 427:-

"It is well settled that in dealing with the petition for Habeas Corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of hearing."

In two early decisions of this Court, however, namely, Naranjan Singh v. State of Punjab 1952 SCR 395 and Ram Narain Singh v. State of Delhi 1953 SCR 652 a slightly different view was expressed and that view was reiterated by this court in B.R.Rao v. State of Orissa AIR 1971 SC 2197 where it was said:

"In Habeas Corpus the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings."

And yet in another decision of this Court in Taluh Hussain v. State of Jammu and Kashmir AIR 1971 SC 62 Mr. Justice Dua, sitting as a single Judge, presumably in the vacation, observed that:

"In habeas corpus proceedings the court has to consider the legality of the detention on the date of the hearing".

Of these three views taken by the court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because an inquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on that date the detention is legal, the court cannot order release of the person

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detained by issuing a writ of Habeas Corpus. .....

8. .....

9. The question can be viewed from another angle, namely, in the light of the principle 'actus curiae neminem gravabit'. The Supreme Court, on this aspect, has observed in the decision reported in A.I.R. 1988 S.C. 1531 (supra), as follows:- "....

"It has been said long ago that 'Actus Curiae Neminem Gravabit' an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law."

Lord Cairns in Alexander Rodger v. The Comptoir D'e scompte de Paris (1869-71) LR.3 PC.465 at page 475 observed thus:-

"Now, their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression 'the act of the Court' is used, it does not mean merely the Primary Court, or of any intermediate Court of appeal, but the act of Court as a whole, from the lowest Court which entertains jurisdiction over the matter upto the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court."

In the light of the above settled proposition, the detenu cannot be set at liberty holding the detention as illegal.

9. In spite of instructions issued to the subordinate judiciary and the authorities concerned emphasising for strict adherence to the procedure, instances of violation have become routine and usual, of course, in some cases, the prosecution, having realised irregularities, rectified the same at a later stage. In this regard, we deem it beneficent to highlight the procedure and guidelines to be followed in cases similar to the instant one by referring to the case law reported in 1983 Law Weekly Criminal 121 (Elumalai vs. State of Tamil Nadu). We here-under quote the relevant paragraph from the said decision,

" 33. The production of the person before the Magistrate is now clearly made a condition precedent in the newly introduced proviso (b) of S.167(2), with Explanation 2 thereto, which we extract below:

"167. (1) .....

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorised the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that -

(a) .....

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(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) .....

Explanation 1. .....

Explanation 2. If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention".

The above proviso and the explanation are introduced by the Parliament for the first time in the new Code obviously for the purpose of affording an opportunity to the accused of being heard by the Magistrate in person as to whether he wishes to make any representation and also giving him an opportunity of showing cause why he should not be remanded. Therefore, as per the new provision of law, the production of the accused before the remanding Magistrate is a condition precedent for an order of detention to any custody being passed by the Magistrate. Explanation 2 makes it clear that if any question arises regarding the production of the accused before the Magistrate as required under proviso (b), the production of the accused may be proved by his signature on the order authorising detention. It follows that the order of remand cannot be made in the absence of the production of the accused before the remaining Magistrate and if such an order is made mechanically contrary to the provision, that order of remand or extension of remand is not legally sustainable, and as such the accused cannot be kept in jail custody even for one minute after the expiry of the period of remand already ordered by the court and the jail authorities cannot keep them inside any longer. Under sub-S.(2) of S.309, the Court is given power to postpone the commencement of or adjourn any inquiry or trial from time to time after taking cognizance of the offence and also to remand the accused, being in custody, by a warrant. From the Bar it was represented that instances are not rare wherein Magistrates, on requisition, go to jails, hospitals, etc., to make an initial order of remand and also to pass extension of the remand already passed. According to them while proviso (b) of s.167(2) would specifically state that the accused should be produced before the Magistrate, the Magistrate going to the jails merely because sufficient escorts are not available or because the authorities concerned entertain an apprehension that there will be law and order problem in a turmoil situation when large number of accused persons are to be taken to the Court, for example, persons arrested in agitation, etc., would not satisfy the requirements of S.167(2), proviso (b), and such a procedure should be highly deprecated as in such circumstances the accused persons would not be having an opportunity of freely making any complaint or statement before the remanding Magistrates. In this connection, it would be appropriate to refer to the decisions rendered by M.N. Moorthy, J., in Mrs.Bartley v. State wherein the learned Judge,

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holding that a remand is essentially a judicial function, has observed--

" The object of requiring the presence of the accused before the Magistrate for purpose of remand is only to enable him to make representation he wishes to make in the matter."

In the very same decision, certain propositions have been laid down for the guidance of all the criminal courts and we extract here-under the relevant ones:-

" .....

3) The courts should not mechanically pass orders of remand without verifying the entries in the diaries and satisfying themselves about the real necessity for granting the remand or extension of remand.

4) Under no circumstance a Magistrate can order the detention of any person in custody or extend such detention without the production of the accused before him in violation of the provisions of the code, viz., proviso (b) to S.167(2), whatever may be the reason stated by the authorities concerned for the non-production of the accused before the Court, such as the non-availability of police escorts, etc., as shown in the charts, given by the learned Public Prosecutor in pursuance of the directions of this Court.

5) The Jail authorities who are also very much concerned in the matter, of keeping the prisoners in cellular confinement, should not keep any person without orders of remand from the concerned Judicial Magistrates even for a moment beyond the period of detention already ordered, because, if the jail staff keep any person inside the prison, without proper orders of court, such keeping would tantamount to an illegal detention."

10. The subsequent case law reported in 1990 Law Weekly (Criminal) 113 (G.K.Moopanar v. State) is also relevant, wherein, referring to Elumalai's case, it has been observed thus,

"There is nothing to indicate on the face of the order that the learned Magistrates applied their minds in this regard. Admittedly, the copies of the diaries were not produced before the learned Magistrates. The learned magistrates had no occasion to consider the length of time required for investigation. Such orders have been deprecated with a strong language by the bench, which decided Elumalai's Case."

11. In the light of the case laws referred to above and taking note of the violation of prisoners' human rights due to failure on the part of the authorities in strictly adhering to the established procedure and also the shocking feature that several such prisoners are not being produced by the Jail Authorities before the Judicial Magistrates in time for extension of remand and equally the Judicial Magistrates also fail to monitor such production, we feel it necessary and appropriate to direct,

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(a) the Additional Director General of Prisons to furnish statistics pertaining to such prisoners confined throughout the State of Tamil Nadu including all sub-Jails; and

(b) the Registry to call for statistics/particulars from all courts of Judicial Magistrates in Tamil Nadu with reference to the observations made in this order,

within a period of two days from to-day so that necessary further action could be taken in this regard.

Post the case on 24.09.2007 for further orders.

21.9.2007

This Habeas Corpus Petition having posted on 24.9.2007 under the caption "for orders" subsequent to the order of this court dated 21.9.2007 and made herein and in the presence of the aforesaid advocates, the Court made the following order:-

(Order of the Court was made by R.Regupathi, J.)

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In the above Habeas Corpus Petition, the petitioner has sought for releasing the detenu by name P.Kanagaraj on the grounds of non-production of the detenu for more than one year before court and non-application of mind on the part of the Judicial Magistrate, Tambaram, in mechanically adjourning the case without even insisting upon the police for production of the detenu as contemplated in the procedure.

2. By our earlier order dated 21.09.2007, we rejected the prayer of the petitioner by referring to the Division Bench decisions of this Court reported in 1993 Law Weekly Criminal 392 (T.Mohan, etc. vs. State by Inspector of Police, CBCID, Madras) and 1983 L.W. (Crl.) 121 (Elumalai vs. state of Tamil Nadu) and also taking note of the submissions made by the learned Additional Public Prosecutor, who submitted that the detenu is in custody not only for the case mentioned by the petitioner but also in respect of two other cases and he is a life convict in one of those two cases; and that, on the earlier occasions, though the detenu was not produced, however, subsequently, on 12.09.2007, he was produced before the Magistrate in respect of the present case and a valid remand extension order was passed against him. However, we felt that such type of illegality and irregularity is continuously happening in spite of issuance of directions/instructions by this Court and, suspecting more such violations in vogue, issued the following direction in the said order,

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" 11. In the light of the case laws referred to above and taking note of the violation of prisoners' human rights due to failure on the part of the authorities in strictly adhering to the established procedure and also the shocking feature that several such prisoners are not being produced by the Jail Authorities before the Judicial Magistrates in time for extension of remand and equally the Judicial Magistrates also fail to monitor such production, we feel it necessary and appropriate to direct,

(a) the Additional Director General of Prisons to furnish statistics pertaining to such prisoners confined throughout the State of Tamil Nadu including all sub-Jails; and

(b) the Registry to call for statistics/particulars from all courts of Judicial Magistrates in Tamil Nadu with reference to the observations made in this order,

within a period of two days from to-day so that necessary further action could be taken in this regard. "

and posted the case to-day for further orders.

3. When the matter has been taken up for enquiry, the Additional Director General of Prisons produced before this court the Statistics pertaining to prisoners kept in the Prisons throughout the State of Tamil Nadu including Sub Jails without production before the concerned Courts of Judicial Magistrate for extension of remand. The particulars furnished at para No.3 are extracted below:-

1.Central Prison - II, Puzhal	=	123
2.Central Prison, Vellore	=	158
3.Central Prison, Cuddalore	=	90
4.Central Prison, Trichy	=	33
5.Central Prison, Salem	=	Nil
6.Central Prison, Coimbatore	=	68
7.Central Prison, Madurai	=	152
8.Central Prison, Palayamkottai	=	21
9.Special Prison for Women, Vellore	=	2
10.Special Prison for Women, Trichy	=	1
11.Special Prison for Women, Puzhal	=	14
Total	=	662

The explanation given for non production of the prisoners and other relevant details read thus:-

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4. Generally the prisoners are not produced before the court for obtaining remand extension in the following circumstances.

1.Non availability of Police escort due to Law and order problem.
2.Prisoner having more cases and who are produced in one court, the extension is obtained to other courts without producing.
3.When the prisoner becomes sick and unfit for travel.
4.Sudden power failure at the other terminal (Court) while the production is going on through Video Conferencing System.
5.Non-functioning of Video Conferencing System due to mechanical problem on sudden occasions.

5. The unavoidable circumstances for the non-production of prisoners are being reported to respective courts and the remand extension are obtained without physical production as per High Court Circular No.38/95, dated 20.6.1995.

6. The remand extension thus obtained on unavoidable circumstances are listed in Annexure-A for perusal of the Hon'ble High Court.

7. The breakup details of remand extension obtained from courts either on one occasion or more occasions due to non arrival escorts and other unavoidable circumstances are tabulated in Annexure B.

Annexure-A

Particulars of remand extension obtained at unavoidable circumstances

1.Central Prison - II, Puzhal	=	11
2.Central Prison, Vellore	=	15
3.Central Prison, Cuddalore	=	11
4.Central Prison, Trichy	=	6
5.Central Prison, Salem	=	Nil
6.Central Prison, Coimbatore	=	14
7.Central Prison, Madurai	=	12
8.Central Prison, Palayamkottai	=	3
9.Special Prison for Women, Vellore	=	Nil
10.Special Prison for Women, Trichy	=	Nil
11.Special Prison for Women, Puzhal	=	2
Total	=	74

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ANNEXURE - B

Breakup details of the remand prisoners who are not produced before the courts in one or more occasions.

S. No.	Name of the Prison	No. of times not produced				
		One Time	Two Times	Three Times	Four Times	Total
1	Central Prison, Puzhal-II	106	11	2	4	123
2	Central Prison, Vellore	142	7	5	4	158
3	Central Prison, Cuddalore	38	21	23	8	90
4	Central Prison, Trichy	24	5	2	2	33
5	Central Prison, Salem	Nil				
6	Central Prison, Coimbatore	59	4	4	1	68
7	Central Prison, Madurai	122	18	6	6	152
8	Central Prison, Palayamkottai	13	7	1		21
9	Special Prison for Women, Vellore	2				2
10	Special Prison for Women, Trichy	1				1
11	Special Prison for Women, Puzhal	11	3			14
	Total	518	76	43	25	662

It is also brought to our notice that the Additional Director General of Prison as well as the Director General of Police, Tamil Nadu, have sent the respective fax messages as extracted hereunder for ensuring the physical production of the prisoners before the jurisdictional Magistrates concerned for passing valid remand orders by them:-

Fax Message sent by Additional Director General of Prisons:-
To
D.I.G. Of Prisons, All Ranges and Superintendent of All Central Prisons, Special for Women, Vellore, Trichy, Puzhal and Borstal School, Pudukottai.

From

Additional Director General of Prisons,
Chennai-8.

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The Superintendent of Prisons are instructed to ensure the physical production of accused by getting escort from the concerned District Superintendent of Police/Commissioner of Police for Remand Extension or through Video Conference system and where there is no video conference system facility available, ensure the physical production through police escort (.) In certain cases, it has come to notice that some of the warrants have been extended by sending warrants to the Court and they should also be physically produced through video conference system and nobody should be left un-noticed (.) The Superintendent of Prisons should also send compliance to this Office to this effect of production and certificate to the effect that no prisoners are confined in prison without physical production and remand extension by 25.9.2007 (.) Since the Honourable High Court is to be appraised in person the Superintendent is directed to concentrate on this line and to send timely reply(.).

No.43098/PW3/2007
Office of the Additional Director
General of Prisons, CMDA Tower II,
Egmore, Chennai 600 008.
Dated 24.09.2007

Post copy sent in confirmation.

Sd/-
Additional Director General
of Prisons.

Fax Message sent by Director General of Police
From
Director General of Police, Tamil Nadu
To
All Sps/COPs
Infn: All range DIGs/All Zonal IGPs
C.NO.64/DGP-TN/Camp/2007 dated 24.09.2007

Provide prison escort on request from all the Central Prisons and Sub-Jails by the prison authorities for production of accused for their remand extension. The practice of obtaining extension of remand without physical production of accused should not be resorted to. Wherever video-conferencing system is available, ensure the presence of Magistrates for extension of remand. Ensure that there are no prisoners of your limit in custody without any remand extension by physical production. Report compliance in 24 hours.

Sd/-
Director General of
Police, Tamil Nadu"

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4. A Division Bench of this Court had an occasion to deal with similar situation in the case law reported in P.Venkatasubramanian v. State of Tamil Nadu [1984 L.W. (Crl.) 211] and passed the following direction:-

> We direct all the Jail Superintendents in the State and in the Union Territory of Pondicherry to release all the prisoners whose remand orders had been obtained by the authorities without production of the prisoner before the Magistrate and a report to this Court on the action taken within a period of two weeks from the date of receipt of this order. As already stated, the Jail Superintendents may take personal bonds from the concerned remand prisoners for such amount as they may consider it reasonable having regard to the gravity of the offence for their appearance on the dates of hearing in the concerned criminal Courts where they have been charged. A copy of the bond will be sent to the concerned Magistrate for taking action in case there is any default in appearance. But these directions shall not apply to those cases where the detention was under the provisions of any law relating to preventing detention.

The facts and circumstances of the case as well as the report furnished by the Additional Director General of Prison dated 21.09.2007, particularly in the context of the ratio laid down by this Court in Elumalai v. State of Tamil Nadu [1983 L.W.(Crl.) 121), G.K.Moopanar v. State [1990 L.W. (Crl.) 113] and P.Venkatasubramanian v. State of Tamil Nadu [1984 L.W. (Crl.) 211], only remind us the words of Judge Hand while writing on Sources of Tolerance in his "Spirit of Liberty", viz.,

> " Liberty is the product, not of institutions, but of a temper, of an attitude towards life. It is idle to look to laws, or Courts, or principalities, or power, to secure it." ,

quoted by a Division Bench of this Court in Madurai Ganesan v. The State of Tamil Nadu [2004 (1) CTC 298], to which one of us (P.D.DINAKARAN, J.) was a party.

5. In view of the same, we are convinced that those prisoners are in unlawful custody in the criminal cases without valid orders of remand; hence, their detention is illegal and they are liable to be set at liberty. But, in view of the alarming statistics furnished before us, if release of those prisoners is ordered, it may create a very adverse impact on the society since we have to take note of the law and order situation in the event of release of the prisoners en masse and also the difficulties experienced by the law enforcement agencies in putting them behind bars, if their judicial custody is necessary. Therefore, we are of the considered view that sufficient opportunity could be given to the Jail Authorities to produce those accused before the Magistrates concerned and in that view of the matter, the following directions are issued;

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A) the Jail Authorities all over the State of Tamil Nadu shall forthwith produce such prisoners, who are, as on date, in confinement without valid orders of remand/extension of remand, before the concerned Judicial Magistrates;

B) Equally, the learned Magistrates shall forthwith issue suitable directions to the Jail Authorities so that such prisoners will be produced before them for passing necessary orders of remand/extension of remand;

C) In cases wherever it is necessary, the jurisdictional Magistrates concerned are at liberty to go to the concerned jail at the request of the concerned jail authorities for passing appropriate orders extending the remand of the respective prisoners, of course, with the prior permission of the concerned Chief Judicial Magistrate/Chief Metropolitan Magistrate.

6. The efforts taken by the Additional Director General of Prisons and the Director General of Police in this regard are appreciated. The Registrar-Judicial also ensured effective compliance of the directions as stated above and the same is recorded with appreciation.

7. Post the matter after two(2) days ie., on 27th September, 2007, for reporting compliance. In the meanwhile, the Home Secretary and the Additional Director General of Prisons shall submit a report, which shall contain the recommendations to avoid recurrence of such unpleasant lapses violating Article 21 of the Constitution of India in future.

sra/ji. 24.9.2007

This Habeas Corpus Petition having posted on 27th day of September 2007, under the caption "for reporting compliance" subsequent to the order of this court dated 21.9.2007 & 24.9.2007 and made herein in the presence of the aforesaid advocates, the Court made the following order:-

(Order of the Court was made by R. REGUPATHI, J.,)

Pursuant to the order of this Court, dated 24.09.2007, the Additional Director General of Prisons, Chennai, has submitted Compliance Report, dated 26.9.2007, wherein, it is stated that, with the assistance of Police, remand extension of all the prisoners in judicial custody all over Tamil Nadu has been regularised by producing them before the Magistrates concerned. It is further stated that this issue was discussed in detail with the Secretary to Government, Home Department, and certain proposals have been formulated to avoid recurrence of such lapses.

2. Likewise, a report, dated 26.9.2007, has also been filed by the Secretary to Government, Home P&E Department, Secretariat, Chennai, which reads as follows:

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" With reference to the direction of the Honourable High Court in its Order 1st cited the Additional Director General of Prisons in his letter 2nd cited has made certain suggestions to avoid recurrence of extension of the remand of the prisoners without producing them before the Magistrate. The suggestions agreed to by the Government are given in the annexure. I am to request that these suggestions may be placed before the Hon'ble High Court for its consideration and suitable orders.

2. In this connection, I am to state that at present Video Conferencing System is available in 16 locations spread over all the Central Prisons and Special Prison for Women and in 62 Court Complexes covering 273 Courts. Proposal for provision of 86 Video Conferencing equipments to the remaining Courts and Prisons (Courts-72 + Prisons-14) at a cost of Rs.894 lakhs has been sent to Ministry of Home Affairs, Government of India on 10.7.2007 seeking financial assistance under the Perspective Plan under Modernization of Prison Administration for the year 2007-08.

3. The Registrar General of High Court, Madras, after receiving particulars from various Courts, has furnished details, from which, it could be seen that remand extension orders had been passed in all the cases and that presently, there is no procedural irregularity or lapse or violation in any case.

4. It is unfortunate that though specific instructions have been issued in this regard to the Prison Authorities and the Magistrates by this Court way back in the year 1983 in Elumalai vs. State of Tamil Nadu (1983 LW (Cri) 121), such irregularities viz., non-production of prisoners for extension of remand by the Jail Authorities/Police on the one hand and mechanical extension of remand without application of mind by the Magistrates on the other hand, is recurring. Subsequently, a Habeas Corpus Petition under similar circumstance was filed during 1984, (the decision rendered in which came to be reported in 1984 L.W. (Cri) 211 (Venkatasubramanian v. State of Tamil Nadu), wherein, since it was reported that 287 such prisoners were not produced before the Magistrates concerned for extension of remand, the Division Bench was inclined to release those prisoners on their own bond. Not ending therewith, incessant recurrence of such cases is being witnessed all these years. As observed in our earlier orders, the present statistics filed by the Additional Director General of Prisons, which indicate the number of such prisoners as 662, is quite disturbing and it has also come to surface that such irregularities are happening continuously unmindful of the repeated directions issued by this Court.

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5. Taking serious note of the same, we issued a direction on 24.9.2007 to the Jail Authorities to produce such prisoners forthwith before the Magistrates concerned and in turn the Magistrates were also directed to pass necessary remand extension orders forthwith, considering various aspects that have to be taken note of while passing such orders. Now, Compliance Report is available before us.

6. We intend to highlight here, in order to see that such instances should not happen in future, there must be proper checks and surveillance by the jail authorities as well as the Judicial Magistrates in that perspective. It is of much relevance to refer to the Circulars issued by this Court on earlier occasions.

7. A circular vide ROC No.3616-A/96/F1 dated 4.10.96 (P.Dis.155/96) had been issued, in which, the Chairperson of National Human Rights Commission, New Delhi, by pointing out that the Sessions Judges are not visiting prisons regularly and it caused much inconvenience to the Prisoners, stated that the same is against the observations of the Supreme Court in Sunil Batra-Vs-Delhi Administration (AIR 1980 SC 1579-1598). Inter alia, it has been observed by the Apex Court that the Sessions Judges, the District Magistrates, Sub Divisional Magistrates and Magistrates subordinate to them and others appointed by them in this behalf are to visit jails periodically in their jurisdiction once in a week under the existing rule.

8. Rules 505 and 506 of the Tamil Nadu Prison Manual prescribe that there shall be a Board of Visitors for each Central Prison and State Prison for Women, Vellore, consisting of Official and Non-Official Members and the Sessions Judges, Assistant Sessions Judges, Chief Judicial Magistrates, Sub-Divisional Judicial Magistrates and Metropolitan Magistrates are Ex-officio visitors of the prisons in their respective jurisdiction. The Circular dated 4.10.1996 reads as follows:

> " The Principal District and Sessions Judges accompanied by the Additional District Judge-cum-Chief Judicial Magistrates of the respective Districts and the Principal Judge, City Civil Court, Madras accompanied by the Chief Metropolitan Magistrate, Egmore, Madras, should visit the prisons, in their respective jurisdiction periodically i.e, on Second Saturday and last Saturday of every month, in the capacity of Ex-Officio visitors of the Prisons and ensure that the conditions in the prison conform to certain minimum standards of maintenance, health, hygiene, institutional treatment and discipline. They are also expected to make expeditious enquiries into the grievance of the Prisoners and to take corrective action as found necessary to uphold human rights of the Prisoners".

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Subsequent to the above said Circular, another Circular dated 16.9.2003 came to be issued, wherein, while insisting for strict compliance of the earlier circulars/ instructions, it was observed as follows:

> " All the instructions issued in this regard are to be adhered scrupulously and any deviation would be viewed seriously".

9. In spite of such repeated directions by this Court through judgments and Circulars, it is worrisome to note that in the instant case on hand, there is a serious failure in adhering to the procedure. As could be seen, the docket entries relating to the accused/detenu for the period from 18.8.2006 to 12.4.2007 shows, ".....A19 not produced." (A-19 is the accused/detenu). It is ex facie apparent that neither the accused was produced before Court by the Jail Authorities nor his remand was extended by the Court by insisting upon the police for his production. Surprisingly, not even such noting has been made for the period from 26.4.2007 to 5.7.2001, and by simply endorsing the petitions filed by the other accused, the case was adjourned. Again, the entries for the period from 19.06.2007 to 02.08.2007 and 16.8.2007 mention ".....A19 not produced". The mechanical way in which the learned Magistrate has maintained the case diary without application of mind; serious lapse on his part in sleeping over the aspect as to whether the accused is in judicial custody; and utter failure on his part to insist for production of the accused for extension of remand, very much shocked the conscience of this court and compelled us to pass orders in intervals for collecting statistics, to set right the wrong in the interests of justice and to uphold the sanctity of prisoners' human rights guaranteed by the Constitution. On our enquiry, we are taken by surprise and wonder since the instance of irregularities run to hundreds in number.

10. It is equally unfortunate that the jail authorities kept the accused in confinement in the name of judicial custody without obtaining any valid order of remand. Whenever such aspects brought to the notice of this Court by way of Habeas Corpus Petitions, both the learned Magistrates as well as the Jail authorities were simply admonished after receiving reports about the production of the accused on subsequent dates. The lapses committed by them were not taken serious note of, which ultimately resulted in steep increase of irregularities throughout the State of Tamil Nadu. While furnishing the statistics to this Court, the Additional Director General of Prisons, Chennai, has given several reasons for perpetuation of such irregularities, which we have taken note of.

11. Now, let us have a look at the relevant provision in the Code of Criminal Procedure ie., Section-167 (2), as per which, it is mandatory,

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(a) that the learned Magistrate cannot remand a person for a term not exceeding 15 days in the whole

(b) No Magistrate shall authorise detention in any custody under this section unless the accused is produced before him.

12. On a careful scrutiny of the above provision, we find that a duty is cast upon the investigating authorities and the jail authorities to "forward" or "to produce" the accused before the learned Magistrate to get an order of remand. The Executive, therefore, keep the person in judicial custody as per the orders of the Judicial Magistrates and further, as per the mandatory provisions, they must produce them in the Court of the learned Magistrate concerned for further orders, failing which, the officer concerned must be proceeded against for dereliction of duty.

Equally when a Magistrate, after application of mind, comes to a prima facie conclusion that judicial custody of a particular person is necessary, it is incumbent on his part to pass an order in that regard and, upon the expiry of the remand, it is his duty to see as to whether detention of such person is necessary or not and for such purpose, he must insist for production of the accused and if there is failure on the part of the police for production of the accused, he must pass necessary orders so that Human Right violations would be put an end to.

13. In the light of our foregoing discussion, we deem it necessary to issue the following directions:

(a) The learned Judicial Magistrates/Judges having Jurisdiction are directed to maintain a separate Register for each Court in this regard so that close monitoring is ensured and lapses and lacunae could be averted. The Circular and the decisions of this Court, adumbrating various directives and guidelines with regard to the issue discussed herein should be scrupulously followed by the subordinate judiciary, failing which, the Chief Judicial Magistrates and the Principal District Judges are directed to initiate suitable proceedings against the errant Magistrates/Judges.

(b) Equally, the jail authorities are also directed to maintain a separate Register in respect of the prisoners for extension of remand and in the event of any extraordinary situation/exigency leading to

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non-production, the same shall be immediately communicated to the Court, failing which, the concerned officers must be proceeded against in accordance with law for the failure on their part.

(c) The Magistrates, in co-operation with the Jail authorities, may arrange the timings of extension of remand through Video Conferencing System and see that, at any rate, the order of extension of remand is passed on the relevant day itself.

(d) As per the undertaking given in the Report submitted by the Secretary to Government, Home, P&E Department, dated 26.9.2007, the Government is directed to provide Video Conferencing equipments to the remaining courts and Prisons at the earliest.

(e) The Officers of the Subordinate Judiciary, during their Jail visits as mandated in the Circulars, must examine the irregularities, in particular non-production of the prisoners, and if anything comes to their adverse notice, they must act immediately to rectify the same. Specific noting to this effect must be made in the Jail Visit Reports that are periodically sent to this Court.

(f) The Additional Director General of Prisons, Chennai, is directed to monitor and supervise the state of affairs through his subordinate Officers by making periodical check-up in various Prisons throughout Tamil Nadu.

We are earnestly hopeful that the aforesaid directions will be followed scrupulously so that there may not be recurrence of any such irregularity in future.

With the above directions, the Habeas Corpus Petition is closed.

sra/ji/sr 27.9.2007

Sd/
Asst.Registrar

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/true copy/

Sub Asst.Registrar

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To

1. The Chief Secretary, Government of Tamil Nadu,
Fort St. George, Chennai.
[with covering letter]

2. The Home Secretary Government of Tamil Nadu,
fort St George, Chennai 9 (With Covering letter)

3. The Secretary,
Home Probhibition & Excise Department,
Fort St George, Chennai 9.

4. The Director General of Police,
Chennai 4.

5. The Commissioner of Police,
Greater Chennai, Egmore, Chennai.

6. The Additional Director General of Prisons,
Chennai.

7. The Superintendent of Prison,
Central Prison, Coimbatore.

8. The Inspector of Police,
Tambaram Police Station,
Kancheepuram District.

9. The Public Prosecutor,
High Court, Madras.

10. The Registrar (General)
High Court, Madras.

11. The Registrar (Judicial)
High Court, Madras.

12. The Deputy Registrar (Grouping)
High Court, Madras.

13. The Section Officer,
Crl Section, High Court, Madras.

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14. The Section Officer,
'F' Section, Administrative Department,
High Court, Madras.
(with a direction to circulate
copy of this order to all the Subordinate Courts
forthwith after obtaining necessary orders
from the Hon'ble the Chief Justice)

HCP No.1306 of 2007.

JRG(CO)
SR/21.9.2007
SR/24.9.2007
SR/17.10.2007

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